

November 6, 2007



Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation in CS Docket No. 92-  
264  
MB Docket No. 05-255  
MB Docket No. 07-42

Dear Ms. Dortch:

On November 5, 2007, Andrew Jay Schwartzman, Harold Feld, and Parul Desai of the Media Access Project, Angela Campbell of the Georgetown Institute for Public Representation, and Shawn Chang of Free Press, and Dr. Gregory Rose, consulting economist, met with Commissioner Copps and Rick Chessen, his media advisor, with regard to the above captioned matters.

With regard to MB Docket No. 05-255, the meeting participants stated that, for reasons explained in previous filings, the Section 612(g) "70/70" test has been met, and the Commission should so find in its pending MVPD Competition Report item. The Commission should move expeditiously on this matter, as a finding that Section 612(g) 70/70 test is met will provide the Commission with additional authority in other cable proceedings.

With regard to CS Docket No. 92-264, the meeting participants stated that the Commission has an adequate record to support the 30% ownership limit and the 40% vertical cap, and the Commission should vote expeditiously to affirm the cap. In this regard, it is useful to note that Comcast, which is the largest cable operator, has proven the most difficult to obtain rate cards for leased access programming and appears to act in the most high-handed and unilateral manner with regard to leased access migration, as demonstrated by the attached notice to Philadelphia area leased access programmers. This foreclosure of leased access programming provides an additional justification for establishing an ownership limit.

With regard to MB Docket No. 07-42, meeting participants provided copies of a letter from Comcast addressed to Philadelphia area leased area programmers, announcing that they would be migrated to digital tier on less than 30 days notice. The decision was unilateral, not subject to discussion, and leased access programmers were not informed in the letter to what channel they would be migrated – making it impossible to begin notifying viewers until Comcast provided further details to the individual programmers. In addition, meeting participants provided Comcast rate cards demonstrating that information is not presented in a uniform manner, that fees are frequently not disclosed to potential programmers until negotiations commence, and that cost on a DMA basis for monthly use are prohibitively expensive to noncommercial local programmers or fledgling businesses seeking to provide local programming, minority programming, or other programming that would provide diverse views and local news.

With regard to the rate itself, Dr. Rose explained the conclusions of his report, filed by NAMAC, *et al.*, on October 15, 2007. In addition, Dr. Rose explained that a new economic analysis based on available ABI and Nielsen data demonstrated that the Commission should eliminate the practice of charging separate fees for services provided, and should instead impose a flat rate of approximately seven cents subscriber for analog tier, and approximately ten cents per subscriber for digital tier. Dr. Rose provides a written analysis explaining his results. That report is attached.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 CFR §1.1206, this letter is being filed with your office.

Respectfully submitted,

/s/

Harold Feld  
Senior Vice President

cc: Commissioner Copps  
Rick Chessen